

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF NEVADA

3 LAS VEGAS, NEVADA

4 In re: THE RHODES COMPANIES, ) AUGUST 24, 2010  
5 LLC, ) E-Filed: 08/27/10  
6 )  
7 Debtor. ) Case No.  
8 ) BK-S-09-14814-LBR  
9 ) Chapter 11  
10

11 TRANSCRIPT OF PROCEEDINGS  
12 OF

13 MOTION TO COMPEL REIMBURSEMENT OF FEES AND EXPENSES  
14 PURSUANT TO CONFIRMATION ORDER  
15 AND CASH-COLLATERAL ORDER, NO. 1182  
16 AND

17 CONTINUED STATUS HEARING

18 RE: OBJECTION TO JAMES RHODES' PROOF OF CLAIM NO. 814-33  
19 AND AMENDMENT OF SCHEDULES AND ASSETS AND LIABILITIES, NO. 1183  
20 AND

21 SECOND APPLICATION FOR COMPENSATION  
22 OF ORDINARY-COURSE PROFESSIONAL BAIRD, WILLIAMS & GREER, LLP,  
23 FOR ALLOWANCE AND PAYMENT  
24 OF COMPENSATION AND REIMBURSEMENT OF EXPENSES  
25 IN EXCESS OF CAP PERMITTED  
BY THE ORDINARY-COURSE PROFESSIONAL COMPENSATION ORDER;  
DECLARATION OF DARYL M. WILLIAMS IN SUPPORT THEREOF  
THE RHODES COMPANIES, LLC, NO. 1204  
AND

MOTION FOR DETERMINATION OF OWNERSHIP OF STANLEY MATERIALS  
21 AND MOTION TO SELL STANLEY MATERIALS, NO. 1219  
22 AND

23 ORDER SHORTENING TIME

24 RE: APPLICATION (MOTION) TO APPROVE STIPULATION  
25 RESOLVING REORGANIZED DEBTOR'S OBJECTION  
TO CREDIT SUISSE'S MOTION TO COMPEL  
REIMBURSEMENT OF FEES AND EXPENSES  
PURSUANT TO CONFIRMATION ORDER  
AND CASH-COLLATERAL ORDER, NO. 1262

1 VOLUME 1  
2 BEFORE THE HONORABLE LINDA B. RIEGLE  
3 UNITED STATES BANKRUPTCY JUDGE

4 Tuesday, August 24, 2010

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23 Court Recorder: Patricia Lilly  
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25 Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

## 1 APPEARANCES:

2 For the Reorganized  
3 Debtor:4 PHILIP C. DUBLIN, ESQ.  
5 MEREDITH A. LAHAIE, ESQ.  
6 Akin, Gump, Strauss, Hauer & Feld, LLP  
7 One Bryant Park  
8 New York, New York 10036

5 For the Debtor:

6 ZACHARIAH LARSON, ESQ.  
7 Larson & Stephens, LLC  
8 810 South Casino Center Boulevard  
9 Suite 104  
10 Las Vegas, Nevada 891018 For Stanley  
9 Consultants, Inc.:10 JANIECE S. MARSHALL, ESQ.  
11 Anderson, McPharlin & Conners, LLP  
12 777 North Rainbow Boulevard  
13 Suite 145  
14 Las Vegas, Nevada 89107

11 For James Rhodes:

12 BRETT A. AXELROD, ESQ.  
13 Greenberg Traurig, LLP  
14 3773 Howard Hughes Parkway  
15 Suite 400-N  
16 Las Vegas, Nevada 8916917 KEVIN N. ANDERSON, ESQ.  
18 Fabian & Clendenin  
19 215 South State Street  
20 Suite 1200  
21 Salt Lake City, Utah 84111

17 For Credit Suisse:

18 VAN C. DURRER, II, ESQ.  
19 Skadden, Arps, Slate, Meagher  
20 & Flom, LLP  
21 300 South Grand Avenue  
22 Suite 3400  
23 Los Angeles, California24 JEFFREY SYLVESTER, ESQ.  
25 Sylvester & Polednak, Ltd.  
26 7371 Prairie Falcon Road  
27 Suite 120  
28 Las Vegas, Nevada 89128

1 (Court convened at 01:44:40 p.m.)

2 THE CLERK: All rise.

3 (Colloquy not on the record.)

4 THE CLERK: Bankruptcy court is now in session.

5 THE COURT: Be seated.

6 (Colloquy not on the record.)

7 THE COURT: All right. Rhodes Companies.

8 Appearances, please.

9 MR. DUBLIN: Good afternoon, your Honor. Phil Dublin  
10 and Meredith Lahaie from Akin, Gump, Strauss, Hauer & Feld on  
11 behalf of the reorganized debtors.

12 MR. LARSON: Good afternoon, your Honor.

13 Zach Larson, local counsel for the Rhodes Companies.

14 MS. MARSHALL: Janiece Marshall on behalf of  
15 Stanley Consultants, Inc.

16 MR. AXELROD: Good afternoon, your Honor.

17 Brett Axelrod for Jim Rhodes.

18 MR. DURRER: Good afternoon, your Honor.

19 Van Durrer, Skadden, Arps, Slate, Meagher & Flom on behalf of  
20 Credit Suisse, the agent for the first-lien secured lenders,  
21 and with me is Jeffrey Sylvester from Sylvester & Polednak.

22 THE COURT: Okay.

23 MR. ANDERSON: Kevin Anderson on behalf of  
24 Mr. Rhodes.

25 THE COURT: Okay. All right. Thank you. All right.

1           The first I have is the motion to compel reimbursement and  
2 with that goes the stipulation concerning those matters.

3           MR. DURRER: Good afternoon, your Honor. Again,  
4 Van Durrer, Skadden, Arps, for Credit Suisse as the agent for  
5 the first-lien bank group.

6           Yes, your Honor. We are happy to report that we were able  
7 to resolve the motion to compel. The stipulation sets forth  
8 the terms.

9           Your Honor may recall that the amount originally sought  
10 was approximately \$915,000 as a reimbursement for the  
11 first-lien agent's counsel's fees for Skadden, and we've agreed  
12 with the reorganized debtors that the amount would be reduced  
13 to \$700,000.

14           THE COURT: Okay. And I assume the former  
15 Unsecured Creditors Committee has been consulted?

16           MR. DURRER: They were noticed with the motion, and  
17 there were no objections filed, your Honor.

18           THE COURT: Okay. And this does not -- there will be  
19 sufficient funds that these can be paid. I know it's been  
20 reduced.

21           But, I mean, the impact is such that this still won't  
22 adversely affect the plan. That was part of the concern  
23 before, obviously --

24           MR. DURRER: My --

25           THE COURT: -- the concerns --

1 MR. DURRER: -- understanding is --

2 THE COURT: -- I raised.

3 MR. DURRER: -- that is correct, but I'll let  
4 Mr. Dublin address that.

5 MR. DUBLIN: And, again, for the record, Phil Dublin,  
6 Akin, Gump, on behalf of the reorganized debtors. That's  
7 correct, your Honor.

8 In connection with when the plan went effective, the full  
9 amount requested by Skadden was put in reserve, so the full  
10 \$915,000 is currently sitting in a separate segregated account  
11 awaiting the outcome of the motion and now the stipulation.

12 So there will be no adverse impact on the estate. In  
13 actuality, we'll get the \$215,000 that's sitting outside  
14 brought back in for operations.

15 THE COURT: Okay. All right. So that's approved, so  
16 that takes care of No. 1, and No. 5 is off calendar.

17 MR. DUBLIN: Thank you.

18 MR. DURRER: And with that, your Honor, may we be  
19 excused --

20 THE COURT: Yes.

21 MR. DURRER: -- from the balance --

22 THE COURT: Thank you.

23 MR. DURRER: -- of the hearing?

24 Thank you, your Honor.

25 THE COURT: Next, we have --

1 (Colloquy not on the record.)

2 THE COURT: Let's go to No. 3, the professional  
3 application of Baird, Williams & Greer.

4 (Colloquy not on the record.)

5 MR. DUBLIN: Your Honor, this application is the  
6 second application of Baird, Williams & Greer. They're an  
7 ordinary-course professional during the pendency of the  
8 Chapter 11 cases for the debtors.

9 Pursuant to the ordinary-course professional order, the  
10 cap that any professional could -- the amount that any  
11 professional could incur was subject to a cap of \$25,000 a  
12 month.

13 Back in March, the Baird firm went over that cap by  
14 approximately \$17,000 -- excuse me -- the exact amount being  
15 \$42,696.69. There have been no objections filed to the  
16 application, and we request that it be approved.

17 THE COURT: All right. And that's approved.

18 MR. DUBLIN: Thank you.

19 THE COURT: Okay. And then let's go next to the  
20 objection to claim of Jim Rhodes.

21 MR. DUBLIN: Yes, your Honor. The reorganized  
22 debtors and Mr. Rhodes have been working on trying to determine  
23 what's the most efficient way to proceed with this matter.

24 And in that regard, the parties have agreed subject to  
25 approval of the Court to bifurcate the process, so that we can

1 go ahead and litigate the legal issue of whether Mr. Rhodes is  
2 entitled to a claim on account of the taxes that were paid.

3 In that regard, we filed a proposed stipulation and order  
4 setting forth certain stipulated facts which we understand from  
5 chambers the request was made that we modify that and change it  
6 to just a stipulation, remove the order.

7 We have not submitted the modified stipulation as of yet,  
8 just awaiting the outcome of the status conference today, and  
9 we were hoping to get some dates from your Honor, so that we  
10 could have a hearing on that bifurcated process, the first, the  
11 legal entitlement, and then to the extent --

12 THE COURT: Okay.

13 MR. DUBLIN: -- there is a legal entitlement an  
14 evidentiary hearing in the future.

15 THE COURT: Well, one thing I want you to do is to  
16 brief slash rebrief the issues now that you have the stipulated  
17 facts. I'm not going to go back and look at your briefs and  
18 plug in those facts. That's your job.

19 MR. DUBLIN: Okay.

20 THE COURT: So now that you have the stipulated  
21 facts, and you've bifurcated the issues, I want new briefs. I  
22 understand full well that much of the legal argument may be  
23 same. That's the beauty of the cut, you know, and the  
24 copy-and-paste function.

25 MR. DUBLIN: Yeah.

1                   THE COURT: But I want it in one place at one time.

2                   MR. DUBLIN: Understood.

3                   THE COURT: So with that, you tell me, first of all,  
4 how long you need to complete that briefing between you, then  
5 I'll want at least 30 days after that.

6                   MR. DUBLIN: Well, I would think the reorganized  
7 debtors can get that completed within a week to ten days,  
8 your Honor.

9                   THE COURT: Okay. And how long do you want,  
10 Ms. Axelrod?

11                  MR. AXELROD: Your Honor, we would request an  
12 additional ten days after we've received the brief from the  
13 reorganized debtors.

14                  THE COURT: Okay. And then a reply.

15                  MR. DUBLIN: A week.

16                  THE COURT: Okay. So that's just about 10, 20 --  
17 that's just about -- that would take us just about to  
18 September 17th, so let's set it for October 25th.

19                  MR. AXELROD: Your Honor, unfortunately, October 25th  
20 I'm going to be out of state.

21                  THE COURT: Okay.

22                  MR. AXELROD: If we could have November, anytime the  
23 first week is fine with me.

24                  THE COURT: The whole week of October 25th you're  
25 out?

1 MR. AXELROD: Yes, I am --

2 THE COURT: Okay.

3 MR. AXELROD: -- your Honor.

4 THE COURT: So then let's go to the first week in  
5 November, then. How about November 4th at 9:30?

6 MR. AXELROD: That's fine by me, your Honor.

7 THE COURT: And as long as I have the last brief by  
8 October 4th, you can adjust your schedules accordingly.

9 MR. DUBLIN: We will. Thank you, your Honor. We  
10 will consult with Ms. Axelrod and set up a schedule.

11 THE COURT: Okay. I just want the -- I mean, by the  
12 last brief, I mean the reply brief --

13 MR. DUBLIN: Understood.

14 THE COURT: -- as well.

15 MR. DUBLIN: Understood.

16 THE COURT: Okay. Good. And then I'm not even going  
17 to give you a trial date if we have to go to trial until after  
18 we complete that process.

19 MR. DUBLIN: Agreed, your Honor.

20 THE COURT: Okay. All right. Good. All right.

21 Now, next, we have the motion for determination.

22 MR. DUBLIN: Your Honor, my colleague, Ms. Lahaie, is  
23 going to handle that.

24 THE COURT: Okay.

25 THE CLERK: Your Honor, I just thought I'd

1 (indiscernible) a little. (Indiscernible) a stipulation set up  
2 for a hearing itself?

3 THE COURT: Okay. Let me ask when you -- you file  
4 your stipulated facts separately, and then if you could do the  
5 order which sets forth your briefing schedule and the hearing  
6 date that would save us having to do that order.

7 MR. DUBLIN: Sure.

8 THE COURT: Okay?

9 MR. DUBLIN: Not a problem.

10 THE COURT: Great.

11 MR. DUBLIN: Thank you.

12 THE COURT: All right. Before we start, the question  
13 I have is why shouldn't this be brought as an adversary.  
14 You're really seeking declaratory relief.

15 I mean, I can understand. The bidding procedures talks  
16 about the Court having decided the determination issue, but it  
17 doesn't say it's to be done by a motion nor does it say it's by  
18 an adversary. Why isn't this an adversary?

19 MS. LAHAIE: Your Honor, it was my understanding that  
20 it was something that could be dealt with based on a motion.  
21 But if it's something you feel needs to be addressed by an  
22 adversary proceeding, we're certainly willing to commence one.

23 THE COURT: Okay. And the next question which  
24 Mr. Dublin may know more than you just because he's been  
25 involved in the process along the way --

1 MS. LAHAIE: Um-h'm.

2 THE COURT: -- is where are we -- have you not  
3 started the marketing?

4 MS. LAHAIE: We have, your Honor.

5 THE COURT: You have started --

6 MS. LAHAIE: We have --

7 THE COURT: -- marketing.

8 MS. LAHAIE: -- been marketing.

9 THE COURT: But the bidding procedures basically  
10 suggests you're not going to market until you have a  
11 determination.

12 MR. DUBLIN: And if I may, your Honor? We have  
13 commenced marketing of the assets, and the current bid deadline  
14 as we would get to in connection with the next matter on the  
15 agenda is August 30.

16 We have not been marketing the assets, including the  
17 disputed Stanley materials. We have included it in the data  
18 room, however, the pleadings related to the Stanley materials,  
19 so that the parties that are reviewing the data room understand  
20 what the issue is.

21 And, right now, those parties are analyzing whether  
22 to make a bid or not, not including the Stanley  
23 materials.

24 THE COURT: So do we have -- of course, we have no  
25 sense 'til August 30th if anybody's going to bid, right?

1                   MR. DUBLIN: Right now, based on conversations with  
2 our consultant as well as with the company, the company expects  
3 that the only bidders are going to be Mr. Rhodes who is the  
4 stalking-horse bidder as well as Stanley, and the reason for  
5 Stanley is just based on the representations they've made  
6 before the Court.

7                   The other parties that have been in to review the data  
8 room, have had conversations with the company, have not  
9 expressed a keen interest in acquiring assets.

10                  THE COURT: Okay. Well, let me tell you my practical  
11 view which may result into a legal view, but let me tell you my  
12 practical view.

13                  It seems to me that if Mr. Rhodes is the only bidder this  
14 estate shouldn't spend the money to get those plans back for  
15 him, and, secondly, we have that Arizona litigation pending.

16                  So I am just a little perplexed why, quite frankly, I  
17 shouldn't just determine that the materials will be decided by  
18 the Arizona court, and why does it matter to this estate? It's  
19 not going to make any difference to this estate if nobody else  
20 bids.

21                  MR. DUBLIN: Your Honor, we don't disagree with that  
22 position at all. The reorganized debtors brought on the motion  
23 based on concerns that if we did not Mr. Rhodes would argue in  
24 front of this Court that we have breached our obligations to  
25 try to get him the assets for which he has put in his -- I

1 don't remember the dollar amount -- 1,000,000-plus-dollar bid.

2 THE COURT: Well, but that bid -- there was no  
3 guarantee those assets were included.

4 MR. DUBLIN: That's correct. We only had to transfer  
5 what we own, so we are seeking a determination as to what it is  
6 that the reorganized debtors own.

7 To the extent the reorganized debtors own these assets, we  
8 believe we can transfer them. If we don't, we can't.

9 Mr. Rhodes is bound to acquire the assets at that set price,  
10 the question being what are the assets that he's acquiring.

11 THE COURT: Okay.

12 MR. DUBLIN: And if I may just supplement one comment  
13 from Ms. Lahaie? To the extent that the Court were to believe  
14 that an adversary proceeding was required, we believe that both  
15 the motion that was filed as well as the responsive pleadings  
16 that have been filed by Stanley are substantially similar to  
17 what would be contained in an adversary proceeding.

18 And we would request that the Court consider this  
19 contested matter as it would do under Bankruptcy Rule 9014,  
20 apply the 7000 rules, and treat it as an adversary proceeding  
21 to the extent the Court wishes to do so.

22 THE COURT: Okay. So let me hear from the other  
23 parties as to why this shouldn't just be decided by the Arizona  
24 court.

25 MR. AXELROD: Brett Axelrod again for Mr. Rhodes.

1 Part of the issue is, you know, how can this Court conduct a  
2 sale, your Honor, until there's a determination of what the  
3 reorganized debtors actually, in fact --

4 THE COURT: Well, the debtor's transferring what the  
5 debtor has, and the point is is just like in any quitclaim  
6 deed.

7 There's no warranties. They've got it. If you want to go  
8 fight about it later, you go fight about it. That happens all  
9 the time.

10 MR. AXELROD: I understand, your Honor, but part of  
11 it was bargained for as part of the, you know, setting for the  
12 stalking-horse bid.

13 And the asset purchase agreement was the debtor's duties  
14 to go ahead and, you know, pursue on this determination, and  
15 that's --

16 THE COURT: Well, it was your client. Why didn't  
17 your client --

18 MR. AXELROD: My client was --

19 THE COURT: It was Mr. Rhodes. Why --

20 MR. AXELROD: -- Mr. --

21 THE COURT: And he ran the company.

22 MR. AXELROD: And the --

23 THE COURT: He never once brought a turnover motion.  
24 He never once thought that this should be litigated in this  
25 court before he then slips through and wants to buy this

1 property, so why should the reorganized debtor pay for him to  
2 do this?

3 MR. AXELROD: Because, your Honor, that was part of  
4 what was bargained for as part of the global settlement and  
5 part of the mediation process.

6 And to, you know, pick and choose of what was bargained  
7 for at that point in time now later on is, you know, asking,  
8 you know, us to then, you know, revisit the whole settlement  
9 which was part of the fundamental part of the plan of  
10 reorganization.

11 And I don't think that we can now go back and bifurcate  
12 what has already been, you know, set in stone through the  
13 confirmation process and through the mediation, and that is,  
14 you know, my client made a good bargain.

15 THE COURT: Okay. Well, then this makes it easy for  
16 me. I determine that this is integrally wrapped up with the  
17 Arizona litigation, and that the Arizona court should determine  
18 who has the rights to the property.

19 So the estate conveys its rights to the litigation --  
20 well, its rights to -- the creditors have the rights against  
21 Stanley.

22 But the rights of whoever is the bidder will be to assert  
23 that it has the rights to the property in the Arizona  
24 litigation.

25 MR. AXELROD: And, your Honor, just so we can

1 clarify, you know, for standing purposes in the, you know,  
2 Arizona litigation because if my client decides to go forward  
3 that to have the, you know, intervention rights, can that be  
4 incorporated --

5 THE COURT: Right. The estate --

6 MR. AXELROD: -- in the order?

7 THE COURT: I determine that the estate's -- the  
8 right to determine is something which I should abstain  
9 from.

10 So, therefore, the matter should be determined by the  
11 Arizona court, and the successful purchaser shall have the  
12 right in that litigation to urge that it has the rights to the  
13 product, to the matter.

14 And, of course, I am not determining whether or not there  
15 may be bankruptcy rights which were or were not cut off, but  
16 the state courts are perfectly capable of determining the  
17 effect, the impact, of a bankruptcy.

18 MR. AXELROD: And, your Honor, we would just request,  
19 too, that pending the ultimate, you know, sale of the Arizona,  
20 you know, assets and, you know, during that, you know, gap  
21 period for lack of a better description that Mr. Rhodes would  
22 have the ability to participate if there's any settlement  
23 negotiations that are occurring that would affect what the  
24 estate's rights are.

25 THE COURT: I think that was the mistake before. You

1 guys didn't include Stanley in your initial discussions, so  
2 that was part of the problem, but that makes sense to bring all  
3 the participants together.

4 MR. AXELROD: Thank you, your Honor.

5 THE COURT: Okay.

6 MR. DUBLIN: Your Honor, with that ruling, the main  
7 concern for the reorganized debtors is that the sale process  
8 move forward because we have no idea how long the state court  
9 litigation may take, and we want to make sure that we can move  
10 forward --

11 THE COURT: I agree.

12 MR. DUBLIN: -- with the sale process.

13 THE COURT: So your bidding deadline's already  
14 August 30th.

15 MR. DUBLIN: That's correct, and we have a --

16 THE COURT: I have made my determination under the  
17 rules --

18 MR. DUBLIN: Right.

19 THE COURT: -- that it's when the determination is  
20 made that's my determination, so we're still on schedule.

21 MR. DUBLIN: Great. And so we previously had  
22 September 13 scheduled for our sale hearing, and I --

23 THE COURT: And we needed to move that, didn't we?  
24 Wasn't that right because the times weren't working right?

25 MR. DUBLIN: No. I think that --

1 THE COURT: Oh, does that time --

2 MR. DUBLIN: That still worked.

3 THE COURT: -- still work?

4 MR. DUBLIN: Yes. Yeah.

5 THE COURT: Okay. September 13th is still fine.

6 MR. DUBLIN: Okay. Great.

7 THE COURT: Okay? So the sale will be  
8 September 13th.

9 MR. DUBLIN: And I think that handles the next agenda  
10 item as well, your Honor --

11 THE COURT: Right.

12 MR. DUBLIN: -- which was the status conference on  
13 the sale.

14 THE COURT: Okay. So, again, you'll know whether or  
15 not there's any other bidders, and we'll have the bidding on  
16 September 13th.

17 And for purposes of the sale just again to make it clear,  
18 it's, in essence, the debtor's quitclaim. We're conveying to  
19 you what rights we have or don't have which may or may not  
20 include that. You're free to determine that in the state court  
21 proceedings.

22 MR. DUBLIN: Thank you, your Honor.

23 THE COURT: Okay? Thank you.

24 (Colloquy not on the record.)

25 THE CLERK: All rise.

(Court concluded at 02:01:18 p.m.)

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1 I certify that the foregoing is a correct transcript  
2 from the electronic sound recording of the proceedings in  
3 the above-entitled matter.

4

5

6 /s/ Lisa L. Cline

08/27/10

7

Lisa L. Cline, Transcriptionist

\_\_\_\_\_  
Date

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